

**THE HONORABLE LOUISE W. FLANAGAN**  
**CHIEF JUDGE**  
**CIVIL AND CRIMINAL PRACTICE AND PROCEDURES**

**A. COMMENCEMENT OF ACTION AND GENERAL PROCEDURES**

- **Initial Status Conference.** Judge Flanagan conducts a brief (normally twenty (20) minutes) initial telephonic conference in most civil matters. In advance, counsel will be required to submit for the court's consideration a joint report and plan as directed in an initial order on scheduling usually entered at or around the close of the pleadings.
- **Policy Concerning Contact with Judge and Chambers Staff.** Counsel should not contact the law clerks or the judge's administrative assistant regarding a case or calendaring conflict. Matters relating to a case or calendaring conflict shall be directed to the clerk of court. Counsel shall initiate any inquiries through the clerk's New Bern office.
- **Motions and Briefs.** Briefs should conform to Local Civil Rule 7.2, EDNC. Please label exhibits clearly. In addition to the citation format set forth in the Rule, Judge Flanagan prefers pinpoint cites to be provided whenever applicable. Counsel shall provide a courtesy copy of motions and memoranda with voluminous attachments for Judge Flanagan, mailed or delivered to the clerk's office at New Bern.
- **Proposed Orders.** Any motion requesting relief (except dispositive motions) shall be accompanied at time of filing with a proposed form of order, stating the requested relief. Proposed orders shall be emailed to [proposedorders\\_nced@nced.uscourts.gov](mailto:proposedorders_nced@nced.uscourts.gov) as an attachment in WordPerfect format. Do not include the signature line on the proposed orders.
- **Miscellany.** Any lawyer who appears at a status conference or hearing is expected to have sufficient familiarity with the case to be able to speak authoritatively and to have the authority to make case decisions.

**B. PRETRIAL PROCEDURES; CIVIL**

- **Emergency motions (e.g., TRO's and select discovery motions).** Attorneys filing emergency motions shall not call the judge's case manager unless or until the matter is assigned to Judge Flanagan. Upon assignment, and prior to filing any motion requiring expedited action, counsel shall contact the courtroom deputy at (252) 638-8534 and advise the clerk's office of the need for expedited action. Except in admiralty matters, counsel initiating emergency action may be requested by the judge to communicate with opposing counsel in an attempt to agree upon temporary action pending hearing.
- **Discovery Disputes.** Prior to filing a motion to compel or similar discovery motion, after a good faith effort to resolve the issue(s) without court involvement, counsel may be required pursuant to the court's case management order to contact the civil case manager at (252) 638-8534, to arrange telephonic conference between the parties and the court. In the court's experience, this informal process very often results in resolution of disputed issues in

discovery, and promotes efficiencies in case administration. The initial status conference provides opportunity for the parties to inquire into this procedure and/or offer reason why it may not be appropriate in a particular case. The court invites no argument in any transmittal; however, submissions bearing directly on the discovery dispute ( i.e. if written discovery is at issue, copies of the interrogatories or requests at issue), upon notice to the opposition, may be provided to the case manager in advance of the conference by facsimile transmittal directed to (252) 638-1529. If the disputed issue(s) are not susceptible to or cannot be resolved through informal telephonic conference, the court will direct submission of written motion and memorandum. Judge Flanagan often will refer discovery disputes reduced to motion to a magistrate judge for monitoring.

- **Motions Hearings.** The court upon occasion will schedule hearing on motion if necessary to clarify or resolve matters raised by the motions or briefing. Counsel will be notified if the judge requests oral argument.
- **Settlement.** The judge encourages and is available to help facilitate settlement. Settlements involving complex matters or prolonged negotiations may be referred to a special master. Judge Flanagan may refer a case to a magistrate judge for court hosted settlement conference upon the parties' request or the court's own initiative, in accordance with Local Civil Rule 101.1, EDNC. She may require the parties to certify their settlement efforts.
- **Final Pretrial Conference/Related Procedures.** Prior to the final pretrial conference, on the schedule set forth in the court's case management order, the parties will submit a proposed pretrial order in conformity with Local Civil Rule 16.1, EDNC, and a proposed joint statement of the case in any jury case. Parties also will submit proposed jury instructions and voir dire in WordPerfect format to Documents\_Judge\_Flanagan@ncd.uscourts.gov. This conference will not automatically be continued if dispositive motions are pending.
- **Expert Testimony.** The judge requires that the parties submit all "expert" witness materials, including c.v.'s, reports, depositions, and objections to qualifications, to chambers in advance of final conference which usually is held before the judge at New Bern two weeks prior to trial, so that the court may conduct its gatekeeping function.
- **Use of Magistrate Judges.** While generally reserving most pretrial matters for decision in assigned cases, the court encourages the full exercise of civil trial jurisdiction by magistrate judges pursuant to 28 U.S.C. S 636(c).

#### **C. PRETRIAL PROCEDURES; CRIMINAL**

- **Bail Procedures.** A magistrate judge determines bail. An appeal of the magistrate judge's decision may be brought to Judge Flanagan.
- **Discovery Procedures.** The judge requests that the government disclose Jencks Act material a reasonable time before trial.

- **Term Procedures.** Generally (but not always), the court's regular criminal term commences the third week of every month. Usually arraignments and Rule 11 hearings for entries of guilty pleas are conducted on the first day of the term by a magistrate judge, with sentencings and motions hearings following before Judge Flanagan. Court will begin promptly at 10:00 a.m. on the first day of the criminal term and at 9:00 a.m. on subsequent days, unless otherwise specified in the calendar. Every effort is made by the clerk to publish the calendar at least two weeks prior to the session. Attorneys, agents, and defendants are expected to be present and ready to proceed at the time specified by the calendar. A defendant who arrives late will be taken into custody.
- **Motions to continue.** A motion to continue arraignment and trial must be filed **not later than seven days** prior to the beginning of the particular session. A continuance request not timely filed, absent extenuating circumstance, will be heard at the time of the scheduled hearing. Any request for a continuance shall be accompanied by a proposed order. Proposed orders continuing arraignment must contain speedy trial language from 18 U.S.C. § 316(h).
- **Scheduling Conflicts.** Attorneys who anticipate scheduling conflicts should direct "conflict letters" to each judge whose docket will be affected. Judge Flanagan's courtroom deputy will attempt to resolve the conflict and notify counsel.
- **Final Pretrial Procedures.** As ordered, the parties shall submit proposed jury instructions and *voir dire* in WordPerfect format to Documents\_Judge\_Flanagan@nced.uscourts.gov no later than **Tuesday** preceding the arraignment.

#### **D. TRIAL PROCEDURES GENERALLY**

- **Trial Schedule.** Generally, jury selection begins at 10:00 a.m. Counsel shall be present and available for conference with the judge if necessary at 9:30 a.m. on the day the trial starts. Thereafter, court begins at 9:00 a.m. On trial days the court recesses around noon for one hour for lunch and recesses for the day by 5:00 p.m. The court generally takes one brief break in the morning and one in the afternoon of approximately ten (10) to fifteen (15) minutes duration. Counsel shall be prepared to take up matters as may be necessary outside the presence of the jury in advance of the 9:00 a.m. beginning time and after the day's recess.
- **Voir Dire.** The judge conducts *voir dire*. As noted, proposed *voir dire* is required as a part of final pretrial preparations.
- **Jury Procedures.** The court utilizes the Arizona struck jury process to empanel the jury. Jurors may take notes at trial. After closing arguments, the judge orally instructs the jury. The jury will receive a written copy of the judge's instructions.
- **Decorum.** Counsel must question witnesses from a seated position at counsel's table unless it is necessary for counsel to discuss an exhibit with the witness at the witness stand. Counsel shall ask the judge's permission to approach a witness for the first time.
- **Opening Statements.** Judge Flanagan and the attorneys agree upon time limitations for

opening statements. Exhibits may be used during opening statements only by agreement of counsel.

- **Objections.** In voicing objections during trial, lawyers should stand and briefly state the reason for the objection. They should not make an argument at that time.
- **Exhibits.** Exhibits shall be marked prior to trial. Particularly in cases involving significant numbers of exhibits, the court encourages the parties to confer and consider ways in which exhibits may be clarified while being exhibited, such as overhead projectors, computer presentations, or other presentation aids. Counsel are directed to contact the courtroom deputy at (252) 638-8534 well in advance of the trial date to determine what technology is available in the courtroom or able to be inserted by counsel and utilized during trial. Please prepare one set of tabbed notebooks containing trial exhibits for Judge Flanagan and her law clerk. Large exhibits should be reduced to 8 ½" x 11" for preservation in the record.
- **Closing Arguments.** Judge Flanagan and the attorneys agree upon time limitations for closing arguments. A charge conference will be held in advance of closing arguments.
- **Wireless Communication Devices.** Counsel are directed to the standing order on [Wireless Communication devices](#), entered August 14, 2005.

#### **E. POST ADJUDICATION OF GUILT**

- **Sentencing Procedures.** Very rarely will the sentencing recommendations of the probation officer be divulged. The court ordinarily does not permit oral testimony at time of sentencing concerning the character of the defendant but invites statements, letters, affidavits, or other written communication to be sent under cover of counsel's letterhead, in unified package if possible, and to be received not later than seven days before sentencing. If either side seeks to advocate a sentence which varies from the United States Sentencing Guidelines, written memorandum advancing that position shall be filed and served with courtesy copy provided to the United States Probation Officer who authored the presentence report.
- **Rule 35 hearings.** Unless otherwise directed by Judge Flanagan, the defendant shall be present at such hearing. If the United States Attorney deems a motion can be effectively made without the presence of the defendant, the motion itself shall state: (1) the reason(s) why the defendant's presence is not necessary; (2) the facts on which the motion is based; (3) the recommendation, if any, of the United States Attorney with regard to the extent of departure; and (4) whether discussion has been held with counsel for defendant regarding necessity of the defendant being present at hearing and, if so, the position of counsel for defendant.